

Chuck

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION FOR )  
BENEFICIAL WATER USE PERMIT 41B-111807 )  
BY K. PHIL & ADELE R. TAYLOR )

FINAL  
ORDER

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the December 19, 2001, Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

**ORDER**

Subject to the terms, conditions, restrictions, and limitations listed below, Beneficial Water Use Permit 41B-111807 by K. Phil & Adele R. Taylor is **ISSUED** to appropriate 300 gpm up to 100 acre-feet per year from groundwater in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The means of diversion is a well(s). The period of appropriation is April 1 to November 1, inclusive, of each year. The purpose is irrigation of a 9-hole golf course. The place of use is 40 acres within the 82 acre golf course located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The place of storage is a 4.35 acre-foot groundwater storage pit located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. This water and that from the companion developed shallow groundwater application, 41B-111806, are to be combined in the groundwater storage pit and pumped from the groundwater storage pit at 600 gpm up to ten

(10) hours per day to irrigate the same place of use. The combined appropriations are not to exceed 144 acre-feet per year.

A. The well(s) must be pump tested using standard aquifer testing techniques and an observation well to confirm aquifer transmissivity and other characteristics used in the drawdown projections. The test pumping rate shall equal or exceed 300 gpm to confirm the aquifer characteristics, and confirm water is available at 300 gpm for a 24 hour period. Aquifer test data and an interpretation report by a qualified expert must be submitted to the Helena Water Resources Regional Office prior to using the well. The report must compare prehearing drawdown projections and drawdown estimates with results based upon aquifer test data. Upon evaluation of the aquifer test report submitted by Permittee, the permit may be modified if the effect on prior appropriators would be greater than projected.

B. Pumping from the groundwater storage pit is limited to ten (10) hours during any twenty-four (24) hour period.

C. The appropriator shall install a Department approved in-line flow meter at a point in the delivery line approved by the Department to record the maximum flow rate and cumulative volume of all water pumped from the well(s). Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the appropriator shall keep a written monthly record of the flow rate and volume of all water diverted from the well(s) including the period of time. Records shall be submitted by November 30<sup>th</sup> of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of a permit or change. The records must be sent to the Helena Water Resources Regional Office. The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

D. The Appropriator shall measure and record the static water level each year in the pumping well(s) once during each of the following time periods: 1) March 1<sup>st</sup> - 15<sup>th</sup>; 2) June 15<sup>th</sup> - 30<sup>th</sup>; 3) November 15<sup>th</sup> - 30<sup>th</sup> beginning at permit issuance through five irrigation seasons after the Notice of Completion is filed. Records must include the water

level, method of measurement, date and time of measurement and description of the measuring point on the casing. The measurement shall be recorded only at a time when the water level is static or there is no significant change in measurements taken 1-2 minutes apart. Appropriator shall submit the records to the Helena Water Resources Regional Office by November 30<sup>th</sup> of each year and/or upon request to the Water Resources Regional Office.

E. The appropriator shall submit a progress report of the work completed under this right by November 30<sup>th</sup> of each year until completion of the project. The reports must be sent to the Helena Water Resources Regional Office.

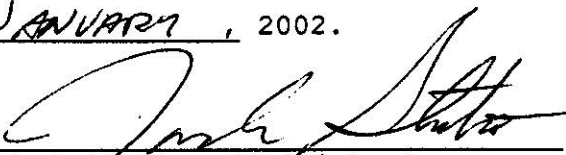
F. The combined volume for 41B-111806 and 41B-111807 shall not exceed 144 acre-feet per year.

#### NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of this Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the proceedings to the district court.

Dated this 31<sup>st</sup> day of JANUARY, 2002.

  
\_\_\_\_\_  
Jack Stults, Administrator  
Water Resources Division  
Department of Natural  
Resources and Conservation  
PO Box 201601  
Helena, MT 59620-1601

# CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Final Order was served upon all parties listed below on this 19<sup>th</sup> day of February, 2002.

K PHIL & ADELE TAYLOR  
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Jennifer L. Hensley  
Hearings Unit  
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*Cluck*

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT )  
41B-111807 BY K. PHIL & ADELE R. ) PROPOSAL FOR DECISION  
TAYLOR )

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, and after notice required by Mont. Code Ann. §85-2-307, a hearing was held on November 7, 2001, in Dillon, Montana, to determine whether a beneficial water use permit should be issued to the Applicant for the above application under the criteria set forth in Mont. Code Ann. §85-2-311.

APPEARANCES

Applicant appeared at the hearing in person through K. Phil Taylor. Willis D. Weight, Ph.D., P.E., appeared as a witness for the Applicant. Peter G. Rebish was called to testify by the Applicant.

Objectors Robert & Susanne Des Jardins; James R. and Sylvia Hodge; George Eaves; Ron and Shellie Doering; and Rebish & Helle, a Partnership, (hereafter this represented objector group is known as OR) appeared at the hearing by and through counsel W. G. Gilbert III. Joe Helle, Ron Doering, James R. Hodge, Robert Des Jardins appeared as witnesses for Objectors OR.

Terry Scow, Water Resources Specialist with the Helena Water Resources Regional Office of the Department of Natural Resources and Conservation (Department) was called to testify by the Hearing Examiner.

EXHIBITS

Both Applicant and Objectors offered exhibits for the record.

Applicant offered twelve exhibits for the record. The Hearing Examiner accepted Applicant's Exhibits 1-12.

**Applicant's Exhibit 1** is a copy Figure 10 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

**Applicant's Exhibit 2** is a copy Figure 11 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

**Applicant's Exhibit 3** is a copy Figure 20 of *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

**Applicant's Exhibit 4** is a copy page 355, Groundwater Hydrograph, *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

**Applicant's Exhibit 5** is a copy page 231, Well Lithology, *Hydrogeology of the Upper Beaverhead Basin near Dillon, MT*; Uthman & Beck; December '98.

**Applicant's Exhibit 6** is Pond Area Schematic.

**Applicant's Exhibit 7** is an Analysis of Drawdown.

**Applicant's Exhibit 8** is a hand drawn area cross-section.

**Applicant's Exhibit 9** is a five page copy of an Agreement between Rebish & Helle, and Peterson Livestock.

**Applicant's Exhibit 10** is a copy of area monthly precipitation, '91-'96.

**Applicant's Exhibit 11** is a Letter from Walter S. Gunn & Bonnie M. Gunn to Mr. & Mrs. Taylor; dated October 21, 2001.

**Applicant's Exhibit 12** is a copy of Figure 9.6, Cone of depression in flat surface area vs. sloping, *Manual of Applied Field Hydrogeology*, Weight and Sonderegger.

Objectors OR offered 15 exhibits for the record. The Hearing Examiner accepted Objector's OR Exhibits 1-15.

**Objector's Exhibit 1** is a copy of the Peterson Well Log signed 01/16/80.

**Objector's Exhibit 2** is a copy of the Peterson Well Log date stamped by DNRC on 4/21/80.

**Objector's Exhibit 3** is joined portions of USGS Quadrangles Glen SE & Dillon East.

**Objector's Exhibit 4** is a copy of page 47 of *Water Right Listing By Owner Name*.

**Objector's Exhibit 5** is a GWIC Wells Report of Rebish wells in Beaverhead County.

**Objector's Exhibit 6** is a Bureau of Mines and Geology (MBMG) Site Report for Rebish.

**Objector's Exhibit 7** is entitled Basis of Water Right.

**Objector's Exhibit 8** is a copy of a Dr. Grimestad Report, about 1979 or 1980.

**Objector's Exhibit 9** is a copy of the Ron & Shellie Doering Well Log Report dated 05/12/95.

**Objector's Exhibit 10** is a GWIC Well Report for Section 12, Township 7 South, Range 8 West.

**Objector's Exhibit 11** is a GWIC Site Report for the Hodge well.

**Objector's Exhibit 12** is a two page copy of Des Jardins' Certificate of Water Right # 41B-094025.

**Objector's Exhibit 13** is a copy of Des Jardins' Well Log Report signed 10/20/94.

**Objector's Exhibit 14** is a copy of Des Jardins' Water Right Abstract for 41B-094025 dated 6/27/01.

**Objector's Exhibit 15** is a GWIC Well Report for Section 12, Township 7 South, Range 8 West.



PRELIMINARY MATTERS

This hearing was held concurrently with Applicant's Application 41B-111806 from a different source for the same purpose. The exhibits are the same for both hearings; individual testimony for the groundwater pit application (41B-111806) preceded testimony for the groundwater well(s) application (41B-111807). The parties stipulated that the possessory interest criterion was not at issue.

Objector Amy S. and David R. Hooks failed to appear at the hearing and are in default.

Objector's Counsel objected to the portion of Applicant's closing statement about the prehearing settlement discussions between Applicant and some of the Objectors because it violates Montana Rule of Evidence 801. Applicant's statement is hearsay which is allowed in this hearing. The objection is OVERRULED and the testimony in question will be judged on its weight.

Objector's Counsel lodged a constitutional objection stating the Department's prehearing use of a *Notice and Statement of Opinion* form violates the due process rights of the Objectors. The form states in part that "Additional conditions may be required...", and "To expedite your application, if the conditions are acceptable, sign here and return...", and "If the proposed conditions are unacceptable and you want a hearing, you must sign and return this form within 30 days of the date of this notice...". The letter covering the *Notice* states in bolded text "Additional conditions may be necessary because of objections filed opposing your application." The Hearing Examiner sees the intent of the cover letter and *Notice* as preliminary notification as used here and not binding in any way upon the Hearing Examiner or upon any objector, and clearly contemplates changes if objections are received. There is no interest of the objectors affected by the use of this *Notice* since they have opportunity to participate in the hearing and recommend their own conditions. The objection is OVERRULED.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:



### FINDINGS OF FACT

1. Application for Beneficial Water Use Permit 41B-111807 in the name of K. Phil and Adele R. Taylor and signed by Phil Taylor was filed with the Department on June 16, 2000. (Department file)  
(Department file)
2. The Environmental Assessment (EA) prepared by the Department for this application was reviewed and is included in the record of this proceeding.
3. Applicant seeks to appropriate 300 gpm up to 100 acre-feet per year from groundwater in the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, and SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The proposed means of diversion is a well(s). The proposed period of appropriation is April 1 to November 1, inclusive, of each year. The proposed purpose is irrigation of a 9-hole golf course. The proposed place of use is 40 acres within the 82 acre golf course located in the SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, all in Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. The place of storage is a 4.35 acre-foot groundwater storage pit located in the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 13, Township 07 South, Range 08 West, Beaverhead County, Montana. This water and that from the companion developed shallow groundwater application, 41B-111806, are to be combined in the groundwater storage pit and pumped from the groundwater storage pit at 600 gpm up to ten (10) hours per day to irrigate the same place of use. The combined appropriations are not to exceed 144 acre-feet per year. (Department file, Applicant testimony)
4. Applicant has proven water is physically available when the proposed well(s) are tested and the test results show 300 gpm is available after they are drilled. Applicant will use two wells only if the first well drilled does not supply the requested 300 gpm. There is

a well (Peterson well) about 400 feet from the proposed well(s) that was tested by the driller at 630 gpm for twenty-four (24) hours in March, 1980. Applicant used the Peterson well information to show water will be available. When Applicant's well(s) is drilled it must be tested to confirm 300 gpm is available for at least 24 hours.

(Department file, testimony of Willis Weight, Ph.D., P.E.)

5. Applicant has proven water is legally available. The record projects drawdown in the nearest well (Peterson, 400') at almost seven feet after 10 days of continuous pumping at 300 gpm, and almost two feet after 100 days of intermittent pumping at 300 gpm. Applicant proposes to pump the well(s) only long enough to make up the deficit of irrigating for ten hours at 600 gpm from the nearby groundwater storage pit where the developed groundwater is collected. The pumping period from the well(s) will be less than twenty-four hours each day because of water supplied by developed shallow groundwater in the area. The projections use aquifer characteristics derived from the nearby Peterson well log. The Peterson well has over 100' of available drawdown and will not be unreasonably affected by the proposed well(s) use. (Department file, testimony of Willis Weight, Ph.D., P.E.)

6. Applicant has proven there would be no adverse effect to the water rights of prior appropriators under an existing water right, certificate, permit, or state water reservation when the proposed well(s) are tested to verify aquifer characteristics used to make the prehearing projections. The projections show drawdown at one mile from the proposed well(s) to be .09' after pumping 300 gpm twelve hours per day for 100 days. Estimates of drawdown 1000' from the pumping well(s) after 100 days of pumping 12 hours per day for 100 days at 300 gpm range from 1' to 1.7'. Effects of a season's pumping on the objector well 2300' from the proposed well(s) is estimated at 1' to 1.7'.

Objector Hodge's well is about one mile (5580') from the proposed well(s) with less than seven feet of available drawdown. Currently the Hodge well pressure is reduced after one hour of pumping as indicated by reduced radius of sprinkler coverage. The proposed well(s) must be tested to confirm the aquifer characteristics used to project little effect on Objector Hodge's well are correct. The proposed well(s) must be tested using standard aquifer testing techniques and an observation well to confirm aquifer transmissivity and other characteristics used in the drawdown projections.

There is a spring on Objector Rebish & Helle land about 1.5 miles downstream in the same drainage. Objector Rebish & Helle alleges a possible connection to the proposed well(s). During the irrigation pumping of the neighboring Peterson well in the early 1980's the spring 1.5 miles down-gradient ceased to flow. Spring flows returned after Peterson well use stopped. The record contains no explanation of this one time loss of spring flow. The cone of depression for the proposed well(s) will not extend to the spring under the proposed pumping scheme. Monitoring pumping rates, and cumulative volumes will provide information regarding any connection between the well and spring. Applicant has agreed to monitor the pumping rates, and cumulative volume pumped from the well(s).

To show there is no adverse affect by long term use the static water levels (SWL) in the pumping well(s) must be measured prior to, during, and after the pumping season. Measurements must start prior to use of the proposed wells and continue for five (5) years of well use at the requested rate. If necessary, diversion can be stopped by shutting off the well pump. (Department file, testimony of Willis Weight, Ph.D., P.E., Peter Rebish, Joe Helle, James Hodge, Robert Des Jardins)

7. Applicant has proven the proposed means of diversion, construction, and operation of the appropriation works are adequate when the proposed wells are constructed by a licensed water well driller. Groundwater will be pumped from the wells at 300 gpm into the groundwater storage pit. Well water will be commingled with developed shallow groundwater in the storage reservoir then diverted at 600 gpm using a *TrashBlaster* reservoir or wet well intake system coupled with a 60 horsepower pump. (Department file, testimony of Phil Taylor)

8. Applicant has proven the proposed use of water for irrigation is beneficial. The project is for irrigation of a golf course. Irrigation, whether alfalfa, pasture, lawn or garden, or turf, is considered a beneficial use as long as the volume is not excessive or wasteful. Six hundred gpm for a ten hour period is required to supply the peak water requirements. The volume requested is not excessive according to the Department. (Department file)

9. Applicant has proven he has possessory interest in the property where the water is to be put to beneficial use. Applicant owns the property. (Department file, Applicant testimony)

10. The proposal is in the Upper Missouri basin closure area. No new consumptive water use permits may be issued in the closure area. Exceptions to the closure include permits from groundwater sources. (Department file, testimony of Terry Scow)

11. The Department requires projects which take longer than three (3) years to complete to submit an annual progress report to assure Applicant's intent is bona fide and ensure the work on the appropriation is completed in a timely manner. Applicant agreed to supplying such progress reports. (Department file, testimony of Terry Scow)

12. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent limitations of his permit. (Department file.)

Based on the foregoing Findings of Fact and the record in this matter, the Hearing Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction to issue a provisional permit for the beneficial use of water if the applicant proves the criteria in Mont. Code Ann. §85-2-311.

2. The Department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria for issuance of a beneficial water use permit; and, to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit. Mont. Code Ann. § 85-2-312.

3. Applicant has met, or there are conditions which can satisfy, the criteria for issuance of a beneficial water use permit and ensure the water is actually applied in a timely manner to the beneficial use specified. See Findings of Fact 4 through 11. Mont. Code Ann. §§ 85-2-311, 312.

**WHEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

#### PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Beneficial Water Use Permit 41B-111807 by K. Phil & Adele R. Taylor is **ISSUED** to appropriate 300 gpm up to 100 acre-feet per year from groundwater in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , all in

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A. The well(s) must be pump tested using standard aquifer testing techniques and an observation well to confirm aquifer transmissivity and other characteristics used in the drawdown projections. The test pumping rate shall equal or exceed 300 gpm to confirm the aquifer characteristics, and confirm water is available at 300 gpm for a 24 hour period. Aquifer test data and an interpretation report by a qualified expert must be submitted to the Helena Water Resources Regional Office prior to using the well. The report must compare prehearing drawdown projections and drawdown estimates with results based upon aquifer test data. Upon evaluation of the aquifer test report submitted by Permittee, the permit may be modified if the effect on prior appropriators would be greater than projected.

B. Pumping from the groundwater storage pit is limited to ten (10) hours during any twenty-four (24) hour period.

C. The appropriator shall install a Department approved in-line flow meter at a point in the delivery line approved by the Department to record the maximum flow rate and cumulative volume of all water pumped from the well(s) to be recorded. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the appropriator shall keep a written monthly record of the flow rate and volume of all water diverted from the well(s) including the period of time. Records shall be submitted by November 30<sup>th</sup> of each year and upon request at other times during the year. Failure to submit reports may be cause for revocation of a permit or change. The records must be sent to the Helena Water Resources Regional Office. The appropriator shall maintain the measuring device so it always operates properly and measures flow rate and volume accurately.

D. The Appropriator shall measure and record the static water level each year in the pumping well(s) once during each of the following time periods: 1) March 1<sup>st</sup> - 15<sup>th</sup>; 2) June 15<sup>th</sup> - 30<sup>th</sup>; 3) November 15<sup>th</sup> - 30<sup>th</sup> beginning at permit issuance through five irrigation seasons after the Notice of Completion is filed. Records must include the water level, method of measurement, date and time of measurement and description of the measuring point on the casing. The measurement shall be recorded only at a time when the water level is static or there is no significant change in measurements taken 1-2 minutes apart. Appropriator shall submit the records to the Helena Water Resources Regional Office by November 30<sup>th</sup> of each year and/or upon request to the Water Resources Regional Office.

E. The appropriator shall submit a progress report of the work completed under this right by November 30<sup>th</sup> of each year until



completion of the project. The reports must be sent to the Helena Water Resources Regional Office.

F. The combined volume for 41B-111806, if issued, and 41B-111807 shall not exceed 144 acre-feet per year.

#### MEMORANDUM

Issuance of an interim permit to drill and use the well was considered for this project. There are two technical reports in the file which indicate there should be no adverse affect on area water use. Both reports use aquifer characteristics determined indirectly. The aquifer characteristics used in these reports appear to be real and merely need confirmation.

There is potential for many additional wells in the area for future domestic needs of lots in existing area subdivisions. Typically small domestic wells are excepted from the water right permitting process and issued after the water is put to beneficial use. They do not go through the more rigorous permitting process. Montana law allows for groundwater areas to be controlled or closed when certain conditions are met. Often these closure petitions lack factual information to support the requested control or closure requested. Applicant and objector well information similar to that required in condition D above could be helpful in future groundwater management of the area and is encouraged by the Hearing Examiner.

#### NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served

upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 18<sup>th</sup> day of December, 2001.



Charles F Brasen  
Hearings Officer  
Water Resources Division  
Department of Natural Resources  
and Conservation  
PO Box 201601  
Helena, Montana 59620-1601

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the Proposal for Decision was served upon all parties listed below on this 19<sup>th</sup> day of December, 2001.

K PHIL & ADELE TAYLOR  
1725 HWY 41  
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